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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 211

FEDERAL TRADE COMMISSION, PETITIONER

v.

ALFRED KLESNER, DOING BUSINESS UNDER THE Name "Shade Shop," Hooper & Klesner, respondent

ON CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the Court of Appeals of the District (R. 414) is reported in 6 F. (2d) 701.

JURISDICTION

The judgment of the Court of Appeals was entered June 1, 1925. (R. 417.) Petition for certiorari was filed August 28, 1925, and was granted October 26, 1925 (R. 418), pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The one question presented is whether the Court of Appeals of the District of Columbia has under Section 5 of the Federal Trade Commission Act jurisdiction to enforce, set aside, or modify orders of the Federal Trade Commission entered against persons engaged in commerce within the District of Columbia, requiring them to cease and desist from the use of unfair methods of competition within the district.

THE STATUTES

The pertinent provisions of the Federal Trade Commission Act which deal with or throw any light on the question presented are as follows:

> SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:
>
> "Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.
>
> "Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partner-

ships, which is organized to carry on business for its own profit or that of its members.

* * * * *

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene

and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the com-

mission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the

Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited.

* * * * *

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have

access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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> Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.
>
> * * * * *

STATEMENT

The Court of Appeals of the District dismissed the Commission's petition to enforce an order of the Commission requiring the respondent to cease and desist from the use of unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. (Act of Sept. 26, 1914, c. 311, 38 Stat. 717.) The decision was on the ground that under the said Act the Court of Appeals had no jurisdiction to entertain such a petition.

The reasoning (R. 414–416) upon which the Court of Appeals based its judgment was, shortly stated, that although sections 4 and 5 of the Act give the Circuit Courts of Appeals of the United States jurisdiction to enforce, set aside, or modify orders of the Commission, it fails to give like jurisdiction to the Court of Appeals of the District of Columbia.

The respondent is a resident of the District and is engaged, among other things, in the manufacture and sale of window shades in the District of Colum-

bia, doing business under the name and style "Shade Shop." For some years prior to respondent's entry into this business another establishment had been engaged exclusively in the window-shade business under the name and style "The Shade Shop" and had become well and favorably known to the purchasing public by that name. The charge of the complaint issued by the Commission (R. 2) was that respondent, by the use of the name "Shade Shop," was deceiving the purchasing public into the belief that his establishment was that of his prior long-established competitor, and by this means was causing persons to deal with the respondent in the belief that they were dealing with his competitor, "The Shade Shop."

The respondent answered (R. 5), evidence was received upon the issues joined, oral argument was had before the Commission, and the Commission made its report upon the facts and issued its order requiring the respondent to cease and desist from doing business in the District of Columbia under the name "Shade Shop" (R. 379).

The respondent failed and refused to obey the order, and the Commission applied to the Court of Appeals of the District of Columbia for a decree of enforcement. (R. 384.) That court, without considering the merits of the case, held that it was without jurisdiction in the premises and dismissed the Commission's petition. (R. 417.)

SPECIFICATION OF ERRORS TO BE URGED

The court erred in holding that it was without jurisdiction under section 5 of the Federal Trade Commission Act to enforce, set aside, or modify orders of the Federal Trade Commission entered under authority of that section against persons engaged in commerce solely within the District of Columbia requiring them to cease and desist from the use of unfair methods of competition within the said District.

SUMMARY OF ARGUMENT

The words "Circuit Court of Appeals" as used in the Act should be held to include the Court of Appeals of the District of Columbia.

The prohibition against the use of unfair methods of competition in section 5 of the Federal Trade Commission Act expressly applies to commerce within the District of Columbia. The Act should be so construed as to give effect to the legislative intent with respect to the powers of the Commission over commerce in the District. This rule of interpretation is applicable even to penal statutes; and is peculiarly applicable to remedial statutes and those relating to appeals. The Trade Commission Act is remedial in character, was enacted to protect the public interest, and should be liberally construed to effectuate its object.

While the words "Circuit Court of Appeals of the United States" do not exactly describe the Court of Appeals of the District of Columbia, it

is clear that Congress intended that the Federal Appellate Court, intermediate between the courts of original jurisdiction and this Court, should have original jurisdiction to review orders entered by the Commission under section 5 of the Act. The courts of the District of Columbia are a part of the Federal judicial system in that they enforce Federal laws applicable to the country at large, including the District of Columbia; and the Court of Appeals corresponds to the Circuit Courts of Appeals of the several circuits and is the court which, following the clear intention of Congress, should have jurisdiction.

This Court has held that jurisdiction, appellate or original, may be conferred upon Federal courts by language which does not follow literally the statutory designations of these courts, where it appeared to be the manifest purpose of Congress to confer jurisdiction and where to hold otherwise would leave parties without the right of appeal. In the instant case, public policy would appear to require the application of a liberal rule, since to deny jurisdiction will deprive the public of any remedy under the Act so far as it applies to the District of Columbia.

Unless the Court of Appeals of the District of Columbia has jurisdiction, the statute can not be administered within the District as there is no other court having the functions and character of the Circuit Court of Appeals of the United States.

ARGUMENT

I

IN ORDER TO CARRY OUT THE PLAIN PROVISIONS OF THE STATUTE, IT IS NECESSARY THAT THE WORDS "CIRCUIT COURT OF APPEALS" AS USED IN THE STATUTE SHOULD BE CONSTRUED TO INCLUDE THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Commission is given power to prevent persons, partnerships, or corporations, from using unfair methods of competition in commerce.

In Section 4 of the Act commerce is defined as meaning not only commerce between the District of Columbia and any State or Territory or foreign nation, but commerce *in the* District of Columbia. The statute leaves no doubt that the Commission is authorized and directed to make orders preventing persons engaged in commerce in the District of Columbia from using unfair methods of competition. There can be no doubt, under the provisions of the Act, that the Commission was authorized to make the order which was made in this case. Of course, Congress did not intend that such orders should be made, unless they were to be enforced by the courts or reviewed in the courts by the persons to whom they are directed.

The provision in section 5 which gives the Commission power to apply to the "circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation re-

sides or carries on business" would allow the Commission to apply to a Circuit Court of Appeals outside of the District of Columbia to enforce an order relating to the conduct of commerce in the District of Columbia in cases where the person, partnership, or corporation conducting business in the District and against whom the order was issued, resides or carries on business outside of the District, but if the phrase "the circuit court of appeals" is not construed to include the Court of Appeals of the District of Columbia, an order directed at unfair competition in commerce conducted in the District would be unenforceable in the courts, where the person or corporation against whom it is directed does not reside or carry on business outside of the District. To read the words "circuit court of appeals" as excluding the Court of Appeals of the District is to attribute to Congress an intention to make an order of the Commission directed at unfair competition in commerce in the District of Columbia enforceable if the offending person resides outside of the District and within the jurisdiction of some circuit court of appeals, but unenforceable if he resides in the District. The statute should not be construed to produce such absurd results, if it may reasonably be avoided.

In Section 9 of the Federal Trade Commission Act "any of the district courts of the United States within the jurisdiction of which such inquiry is carried on" may issue or make orders requiring persons to appear and give evidence before the

Commission and may punish disobedience of such orders as a contempt. Here we have a situation similar to that involving review of the Commission's order, so that unless the Supreme Court of the District is to be considered a district court of the United States within the meaning of this statute there would be no way of compelling the attendance of witnesses residing in the District in case of inquiries being conducted within the District.

The decision of the Court of Appeals in this case has consequences more far-reaching than are at first apparent. Under the Act of October 15, 1914 (c. 323, 38 Stat. 730), known as the Clayton Law, it is provided in section 11 that the means of enforcing compliance with sections 2, 3, 7, and 8 by the Interstate Commerce Commission in the case of common carriers, by the Federal Reserve Board in the case of banks, and by the Federal Trade Commission with respect to other commerce, shall be by application "to the circuit court of appeals of the United States within any circuit where the violation complained of was or is being committed or where such person resides or carries on business." In that statute, as in the one here under consideration, the commerce referred to is defined to include commerce in the District. If the Court of Appeals of the District was right in the decision in this case, it will follow that neither the Interstate Commerce Commission, the Federal Reserve Board, nor the Federal Trade Commission may enforce the provi-

sions of the Clayton Act with respect to commerce in the District unless the offending person or corporation resides outside of it.

II

JURISDICTION MAY BE CONFERRED UPON FEDERAL COURTS BY TERMS NOT COINCIDING LITERALLY WITH THE STATUTORY DESIGNATION OF SUCH COURTS

While very cautious in construing Acts of Congress as conferring jurisdiction upon the inferior Federal courts unless the language is clear and explicit, this Court nevertheless holds that both appellate and original jurisdiction is conferred where it is the manifest purpose to confer it and where to hold otherwise would leave the parties without appeal or the substantive law without means of enforcement. Thus appellate jurisdiction has been upheld where the language of the statute did not exactly describe the courts which were ultimately held to have jurisdiction or did not definitely include the class of cases in which jurisdiction was held to have been conferred. In *Steamer Coquitlam* v. *United States*, 163 U. S. 346, this Court held that the Act of March 3, 1891, which declared that the Circuit Courts of Appeals shall have the same appellate jurisdiction to review judgments of the Supreme Courts of the Territories as by this Act they may have to review judgments of the District and Circuit Courts, conferred jurisdiction upon the Circuit Court of Appeals for the Ninth Cir-

cuit to review decisions of the highest court of Alaska, although the statutory designation of that court was "District Court" and the highest courts of the other Territories were termed "Supreme Courts." This Court said in part:

> Alaska is one of the Territories of the United States. It was so designated in that order (order of Supreme Court May 11, 1891) and has always been so regarded. And the court established by the Act of 1884 is the court of last resort within the limits of that Territory. It is, therefore, in every substantial sense the Supreme Court of that territory. No reason can be suggested why a Territory of the United States, in which the court of last resort is called a Supreme Court, should be assigned to some circuit established by Congress that does not apply with full force to the Territory of Alaska, in which the court of last resort is designated as the District Court of Alaska. The title of the territorial court is not so material as its character. Looking at the whole scope of the Act of 1891, we do not doubt that Congress contemplated that the final orders and decrees of the courts of last resort in the organized Territories of the United States—by whatever name those courts were designated in legislative enactments—should be reviewed by the proper Circuit Court of Appeals, leaving to this Court the assignment of the respective Territories among the existing circuits.

In *Craig* v. *Hecht*, 263 U. S. 255, this Court held that the provision of the Act of March 3, 1891, which was—

> That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals, by writ of errors or otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the Circuit Court of Appeals hereby established,

and the further provision that—

> the Circuit Courts of Appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the District Courts,

authorized a review by the Circuit Court of Appeals of a final order of a district judge made at chambers, as distinguished from a "final decision of a district court." In that case this court had before it conflicting decisions of the Circuit Court of Appeals for the Fifth Circuit (*Hoskins* v. *Funk*, 239 Fed. 278) and the Circuit Court of Appeals for the Eighth Circuit (*Webb* v. *York*, 74 Fed. 753) on the point, the former holding that the Circuit Court of Appeals Act did not confer upon the court jurisdiction to review the decision of a district judge made at chambers in vacation, and the latter holding to the contrary. This court quoted with approval

the decision in *Webb* v. *York,* which was based almost wholly upon the ground that the legislature obviously did not intend to abolish the right of appeal in such cases. The portion of the decision in the *Webb case,* quoted with approval by this Court, is as follows:

> The result is that, unless the Act of March 3, 1891, is construed as lodging in the Circuit Court of Appeals the appellate jurisdiction, under Section 763, from final decisions of district judges, that was previously exercised by the circuit courts, the right of appeal, plainly granted by that section, from final decisions of district judges at chambers in habeas corpus cases is lost, and becomes valueless, because no court has been designated to which appeals in such cases may be taken. We think it clear that it was not the purpose of Congress to thus legislate. If it had intended to abolish the right of appeal from the decisions of district judges in habeas corpus cases, it would doubtless have done so in plain and direct terms. The fact that the right of appeal was not thus abolished furnishes a persuasive inference that Congress intended to designate a court to hear and determine such appeals. In *McLish* v. *Roff*, 141 U. S. 661, 666, 12 Sup. Ct. 118, and in *Lau Ow Bew* v. *United States,* 144 U. S. 47, 12 Sup. Ct. 517, it was said, in substance, by the Supreme Court of the United States that it was the purpose of the Act of March 3, 1891, to distribute the entire appellate jurisdiction theretofore exercised by the Federal Courts

> between the Supreme Court of the United States and the Circuit Courts of Appeals that were thereby established. This intent, we think, is plainly apparent from the terms of the Act. Moreover, the Act in question very much enlarged the right of appeal, and that was one of its chief objects. In no single instance, so far as we are aware, was a previous right of appeal abolished. We think, therefore, that it may be fairly concluded that it was the intention of Congress to confer on the Circuit Courts of Appeals the right to hear appeals from final "orders made by district judges in habeas corpus cases, as well as to hear appeals from final decisions of District Courts made in such cases. We can conceive of no reason why the right should be denied in the one case and granted in the other, and such we believe was not the intent of the lawmaker."

This Court reached the conclusion that jurisdiction attached in such cases, despite the fact that the previous statute specifically providing for an appeal in such cases, was expressly repealed by the Circuit Court of Appeals Act.

III

THE COURTS OF THE DISTRICT OF COLUMBIA ARE A PART OF THE FEDERAL JUDICIAL SYSTEM AND HAVE JURISDICTION TO ENFORCE GENERAL FEDERAL STATUTES APPLICABLE TO THE DISTRICT OF COLUMBIA

The Supreme Court and the Court of Appeals of the District of Columbia, and the courts of the Territories perform those judicial functions that are

elsewhere performed by both State and Federal Courts. For the purpose of enforcing Federal Statutes of general application, these courts are a part of the Federal Judicial system. But when they are enforcing statutes of local application only they have such powers and jurisdiction "as a State may confer on her courts." *Keller* v. *Potomac Elec. Co.* (1923), 261 U. S. 428, 442.

It is the intention of Congress, and the policy of this Court, that all laws generally applicable to the United States shall have within the District of Columbia the same force and effect given to them elsewhere in the United States. (16 Stat. 419, 496; *Benson* v. *Henkel,* 198 U. S. 1. *Hyattsville Building Assn.* v. *Bouick,* 44 D. C. App. 408; U. S. V. B. & O. R. R. Co., 26 D. C. App. 581.)

For this purpose the courts of the District of Columbia are Federal courts of the United States; and in the enforcement of general Federal law that court of the District of Columbia has jurisdiction which corresponds to the Federal court on which jurisdiction is conferred by the statute. The courts, therefore, in construing enactments of Congress, decline to adopt such strict interpretation as will defeat the intent of Congress.

Thus in *Benson* v. *Henkel,* 198 U. S. 1, overruling *U. S.* v. *Dana,* 68 Fed. 886, this Court held that the Supreme Court of the District of Columbia was a "Court of the United States" and that the District of Columbia was a "District" within the meaning

of R. S. Sec. 1014 (Comp. Stat., 1916, Sec. 1674), providing for the apprehension and holding for trial before such "Court of the United States" as by law had cognizance of the offense, and for removal thereto.

So, where the Judicial Code provided that "the writ of injunction shall not be granted by any court of the United States" to stay proceedings of any court of a State, except in cases where such injunctions may be authorized by any law relating to bankruptcy, the Court of Appeals of the District of Columbia held that the statute applied to the Supreme Court of the District of Columbia and that court was prohibited from issuing an injunction to stay proceedings in courts of the State of Maryland. (*Hyattsville Building Association* v. *Bouick*, 44 D. C. App. 408.)

Where general acts of Congress have been clearly applicable to the District of Columbia, or where the District has by express terms been included within the field of operation of the statute, the courts have not permitted the statutes to fall for want of a tribunal in the District of Columbia to enforce them.

The case of *United States* v. *B. & O. Railroad*, 26 D. C. App. 581, turned upon the question whether the Supreme Court of the District of Columbia, sitting at special term, had jurisdiction to try a civil suit for the recovery of a penalty for violation of the Safety Appliance Act. The substantive law of

the Act as originally passed did not expressly apply to railroads in the District of Columbia.

By an amendment it was provided that the penalty of $100 imposed by the original Act should be recoverable in a civil suit to be brought by the United States district attorney in the "District Court of the United States having jurisdiction in the locality where such violation shall have been committed." By a still later amendment the substantive law was expressly made applicable to railroads within the District of Columbia to entertain suits under the Act. The United States brought an action in the Supreme Court of the District of Columbia for a recovery for a violation of the Act within the District. The Court of Appeals held, reversing the trial court, that the Supreme Court of the District of Columbia had jurisdiction.

While in that case the court quotes Section 84 of the Code of the District of Columbia, which provides that the Supreme Court of the District shall have and exercise the same powers as the other District Courts of the United States, the decision is not rested solely upon this provision but upon the broader ground that where a statute specifically applies to the District of Columbia that court in the District which occupies the place similar to that occupied by the United States District Court in the Federal judicial system has jurisdiction. The court declared that since the Act specifically includes the District of Columbia within its field

of operation, and since Section 1 of the District Code requires that all Acts of Congress applicable to all parts of the United States must be enforced in the District of Columbia, when Congress imposed a penalty for a violation of the Act and provided that suits for recovery should be brought in the United States District Court having jurisdiction in the locality where the violation was committed, Congress intended to include within the phrase "United States District Court" that United States court in the District of Columbia proper to take jurisdiction.

The decision is based in large measure upon the reasoning of this Court in the *Steamer Coquitlam case,* above discussed.

See *Arnstein* v. *United States,* 296 Fed. 946.

IV

IT IS NOT OUT OF ACCORD WITH THE LAWS ESTABLISHING ITS JURISDICTION TO HOLD THAT THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IS A "CIRCUIT COURT OF APPEALS" WITHIN THE MEANING OF THE FEDERAL TRADE COMMISSION ACT

There is no statute which in terms gives to the Court of Appeals of the District of Columbia the same jurisdiction in all respects which Congress has given to the Circuit Court of Appeals of the United States.

The Court of Appeals of the District of Columbia was created by an Act of Congress approved February 9, 1893, 27 Stat. L. 434, which conferred

upon it appellate jurisdiction over the Supreme Court of the District of Columbia. Section 7 thereof provides:

> That any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, may appeal therefrom to the court of appeals hereby created; and upon such appeal the court of appeals shall review such order, judgment, or decree and affirm, reverse, or modify the same as shall be just.

This section 7 also abolished the appellate power of the Supreme Court of the District theretofore existing and also permitted appeal to the Court of Appeals from certain designated interlocutory orders of the Supreme Court.

The Supreme Court of the District of Columbia was created by an Act of Congress approved March 3, 1863, as the successor of the Circuit Court of the District of Columbia with the same powers and the same jurisdiction as exercised by the Circuit Court. (12 Stat. L. 762; *U. S.* v. *Haynes*, 29 Fed. Rep. 691, 696.)

> The jurisdiction of the court is briefly stated in section 61 of the Code of Law for the District of Columbia in the following language:
>
> "The said Court shall possess the same powers and exercise the same jurisdiction as the Circuit and District Courts of the United States, and shall be deemed a court of the

United States, and shall also have and exercise all the jurisdiction possessed and exercised by the Supreme Court of the District of Columbia under the Act of Congress approved March 3, 1863, creating that Court and at the date of the passage of this Code.

"Congress has also enacted that a special term of the court shall be a District Court of the United States (Section 64 of the District Code), and it has also invested the justices of said Court with the powers and jurisdiction possessed by the judges of the District Courts of the United States (Sections 62 and 84 of the Code)." (Justice Siddons, 7 Natl. U. L. R. at p. 6.)

Thus by that statute the Supreme Court of the District of Columbia has all the powers and jurisdiction of the District Courts of the United States in the several federal judicial districts that exist throughout the United States, though it is not in terms called a Federal District Court. It entertains in the District of Columbia all suits and prosecutions under Federal laws generally applicable to the United States and to the District of Columbia. Mr. Justice Siddons, 7 Natl. U. L. Rev. 1.

The Circuit Courts of Appeals of the United States have appellate jurisdiction over no other cases than those coming up to them from the District Courts of the United States. So, too, the Court of Appeals of the District of Columbia, sitting as a Federal appellate court, has Federal appellate jurisdiction over no other cases than those

coming up to it from the Supreme Court of the District of Columbia.

Since, so far as the general Federal laws are concerned, the jurisdiction of the Supreme Court of the District of Columbia is the same as that of the United States District Courts, the appellate jurisdiction on the Court of Appeals of the District of Columbia, sitting as a Federal appellate court, is the same in character and functions as that of the Circuit Courts of Appeals of the United States.

The District Courts of the United States, the Supreme Court of the District of Columbia, and the corresponding Territorial Courts are, in practically all cases, courts of original jurisdiction to entertain suits and prosecutions under general Federal statutes. Had the Federal Trade Commission Act provided that the District Courts of the United States should have jurisdiction to review orders of the Commission, the Supreme Court of the District of Columbia, under the decisions cited, would unquestionably have had jurisdiction to review such orders in the District of Columbia.

In passing the Federal Trade Commission Act, however, Congress, for reasons of its own, departed from its usual custom of lodging in the District Courts original jurisdiction to entertain suits under general laws, and conferred upon the Circuit Courts of Appeals original jurisdiction to review orders of the Federal Trade Commission. Manifestly, its intent was to include within the words "Circuit Court

of Appeals of the United States" the Court of Appeals of the District of Columbia, which, it is urged, is a Circuit Court of Appeals within the meaning of these words as used in the statute. The Court of Appeals of the District of Columbia is a court of the United States and it is an appellate court intermediate between the United States court of original jurisdiction in the District of Columbia—the Supreme Court of the District of Columbia—and the Supreme Court of the United States. It is the proper court to exercise jurisdiction in these cases and Congress intended that it should have that jurisdiction.

It is the statutory duty of the Commission to hold hearings and to pass orders respecting unfair competition in commerce in the District of Columbia. Yet it will be an idle ceremony so far as the District of Columbia is concerned unless the Court of Appeals of the District is included within the phrase "Circuit Courts of Appeals," and the District is considered a "circuit."

While the Federal Trade Commission Act is not criminal and the construction given it by the court below in the case at bar is not therefore attended with the consequences which this court so vividly portrays in *Benson* v. *Henkel, supra* (p. 17), it is nevertheless equally clear from the face of the statute itself that Congress did not intend the District of Columbia to be the only place in the United States under Federal jurisdiction where the meth-

ods of competition prohibited by the Act could be employed with impunity.

Nor did it intend that orders of the Trade Commission, Interstate Commerce Commission, and the Federal Reserve Board, made under the authority of Section 11 of the Clayton Act, should be without force and effect within the District of Columbia because of lack of a tribunal to which these bodies can appeal for their enforcement.

Certain decisions of this Court are urged as conclusive against the petitioner. Conspicuous among these are the opinions in *Tefft* v. *Munsuri*, 222 U. S. 114, and *Swift* v. *Hoover*, 242 U. S. 107. In the former case, this Court held that it had no jurisdiction under the Bankruptcy Act to review a decision of the District Court of the United States for the District of Porto Rico in a step in a proceeding in bankruptcy, but only to review decisions of that court in controversies in bankruptcy. In the latter case this Court held that it was without jurisdiction to review a decision of the Supreme Court of the Dstrict of Columbia, refusing to adjudge the defendant a bankrupt, on the ground that such a question does not involve a controversy in bankruptcy but is a mere step in a bankruptcy proceeding. The decisions in these two cases are not opposed to the petitioners' contention for the reason that in these cases the decision of the Court was in keeping with legislative policy and intent as expressed in the bankruptcy acts, which had pro-

vided that decisions of the courts of original jurisdiction in mere steps in bankruptcy proceedings should be reviewed by the Circuit Courts of Appeals and that only controversies in bankruptcy should go to this Court. The decisions in these cases therefore but carried out the known and long-established policy of Congress. In the instant case, the decision of the court below is not in accord with the legislative policy as expressed on the face of the statute.

It is submitted that the decision of the court below was erroneous and that the decree should be reversed.

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BAYARD T. HAINER,
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ADRIEN F. BUSICK,
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JANUARY, 1927.

Charles Melvin Neff
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